

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO: 4:12-CR-00046-BR

UNITED STATES OF AMERICA

v.

JEFFREY GLENN TOOHEY

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ORDER

This matter is before the court on defendant's motion for an extension of time to file a 28 U.S.C. § 2255 motion. (DE # 80.) The motion itself raises no grounds for relief under § 2255, and thus, the court need not determine whether the filing should be re-characterized as a motion under § 2255. See Ramirez v. United States, 461 F. Supp. 2d 439, 441 (E.D. Va. 2006) ("Movant's motion for extension of time does not allege a cognizable claim for relief under § 2255, and thus is not amenable to recharacterization as a substantive § 2255 petition."). Because defendant has not filed a § 2255 motion, the court lacks jurisdiction to consider a motion for extension of time to file the same. See id. at 440-41 ("While the Fourth Circuit has not yet considered the issue, every court to have done so has concluded that federal courts lack jurisdiction to consider the timeliness of a § 2255 petition until the petition itself is filed because a motion for extension of time is not, by itself, a 'case or controversy' within the meaning of Article III of the United States Constitution." (collecting cases)). The motion is DENIED.

This 21 August 2014.



W. Earl Britt
Senior U.S. District Judge